

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EMERSON LESLIE,

Petitioner,

VS.

D. W. NEVEN, et al.,

## Respondents.

Case No. 2:13-cv-01989-APG-VCF

## ORDER

10 Before the court are the petition for a writ of habeas corpus (ECF No. 8), respondents'  
11 answer (ECF No. 50), and petitioner's reply (ECF No. 51). The court finds that petitioner is not  
12 entitled to relief, and the court denies the petition.

13       Outside of a hotel in downtown Las Vegas, petitioner beat up a man, knocking him out and  
14 seriously injuring him. A security camera recorded the beating. The hotel manager viewed the  
15 videotape and identified petitioner as the attacker. When police arrested petitioner, he fought back.  
16 Petitioner was convicted of battery causing substantial bodily harm and assault upon an officer,  
17 respectively. Petitioner had two prior felony convictions, and the state district court sentenced him  
18 as a habitual criminal under Nev. Rev. Stat. § 207.010. Ex. 21 (ECF No. 24-24).

19 Congress has limited the circumstances in which a federal court can grant relief to a  
20 petitioner who is in custody pursuant to a judgment of conviction of a state court.

21 An application for a writ of habeas corpus on behalf of a person in custody pursuant to the  
22 judgment of a State court shall not be granted with respect to any claim that was adjudicated  
on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

26 28 U.S.C. § 2254(d). “By its terms § 2254(d) bars relitigation of any claim ‘adjudicated on the  
27 merits’ in state court, subject only to the exceptions in §§ 2254(d)(1) and (d)(2).” Harrington v.  
28 Richter, 562 U.S. 86, 98 (2011).

1       Federal habeas relief may not be granted for claims subject to § 2254(d) unless it is shown  
 2       that the earlier state court's decision "was contrary to" federal law then clearly established  
 3       in the holdings of this Court, § 2254(d)(1); Williams v. Taylor, 529 U.S. 362, 412 (2000); or  
 4       that it "involved an unreasonable application of" such law, § 2254(d)(1); or that it "was  
 5       based on an unreasonable determination of the facts" in light of the record before the state  
 6       court, § 2254(d)(2).

7       Richter, 562 U.S. at 100. "For purposes of § 2254(d)(1), 'an unreasonable application of federal  
 8       law is different from an incorrect application of federal law.'" Id. (citation omitted). "A state  
 9       court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded  
 10      jurists could disagree' on the correctness of the state court's decision." Id. (citation omitted).

11       [E]valuating whether a rule application was unreasonable requires considering the rule's  
 12      specificity. The more general the rule, the more leeway courts have in reaching outcomes  
 13      in case-by-case determinations.

14       Yarborough v. Alvarado, 541 U.S. 652, 664 (2004).

15       Under § 2254(d), a habeas court must determine what arguments or theories supported or, as  
 16      here, could have supported, the state court's decision; and then it must ask whether it is  
 17      possible fairminded jurists could disagree that those arguments or theories are inconsistent  
 18      with the holding in a prior decision of this Court.

19       Richter, 562 U.S. at 102.

20       As a condition for obtaining habeas corpus from a federal court, a state prisoner must show  
 21      that the state court's ruling on the claim being presented in federal court was so lacking in  
 22      justification that there was an error well understood and comprehended in existing law  
 23      beyond any possibility for fairminded disagreement.

24       Id. at 103.

25       Ground 1 contains multiple claims of ineffective assistance of counsel. A petitioner  
 26      claiming ineffective assistance of counsel must demonstrate (1) that the defense attorney's  
 27      representation "fell below an objective standard of reasonableness," Strickland v. Washington, 466  
 28      U.S. 668, 688 (1984), and (2) that the attorney's deficient performance prejudiced the defendant  
 29      such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of  
 30      the proceeding would have been different," id. at 694. "[T]here is no reason for a court deciding an  
 31      ineffective assistance claim to approach the inquiry in the same order or even to address both  
 32      components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697.

33       The Sixth Amendment does not guarantee effective counsel per se, but rather a fair  
 34      proceeding with a reliable outcome. See Strickland, 466 U.S. at 691-92. See also Jennings v.

1       Woodford, 290 F.3d 1006, 1012 (9th Cir. 2002). Consequently, a demonstration that counsel fell  
 2 below an objective standard of reasonableness alone is insufficient to warrant a finding of  
 3 ineffective assistance. The petitioner must also show that the attorney's sub-par performance  
 4 prejudiced the defense. Strickland, 466 U.S. at 691-92. There must be a reasonable probability  
 5 that, but for the attorney's challenged conduct, the result of the proceeding in question would have  
 6 been different. Id. at 694. "A reasonable probability is a probability sufficient to undermine  
 7 confidence in the outcome." Id.

8       Establishing that a state court's application of Strickland was unreasonable under § 2254(d)  
 9 is all the more difficult. The standards created by Strickland and § 2254(d) are both "highly  
 10 deferential," . . . and when the two apply in tandem, review is "doubly" so . . . . The  
 11 Strickland standard is a general one, so the range of reasonable applications is substantial.  
 12 Federal habeas courts must guard against the danger of equating unreasonableness under  
 13 Strickland with unreasonableness under § 2254(d). When § 2254(d) applies, the question is  
 14 not whether counsel's actions were reasonable. The question is whether there is any  
 15 reasonable argument that counsel satisfied Strickland's deferential standard.

16       Harrington v. Richter, 562 U.S. 86, 105 (2011) (citations omitted).

17       Ground 1(A) itself contains multiple claims of ineffective assistance of counsel. First,  
 18 petitioner claims that counsel failed to investigate three people. On this issue, the Nevada Supreme  
 19 Court held:

20       Fourth, appellant claimed that trial counsel was ineffective for failing to interview (1) T.  
 21 Purifoy to determine if she actually consented to a search of her motel room where  
 22 appellant's identification was obtained; (2) appellant's girlfriend, who would have  
 23 impeached the victim and testified that appellant acted in self-defense to the assault charge;  
 24 and (3) the victim, which would have helped counsel determine how to question him at trial.  
 25 Appellant failed to demonstrate that counsel's performance was deficient or that he was  
 26 prejudiced. Trial counsel testified during the evidentiary hearing that he attempted, but was  
 27 unable, to contact T. Purifoy before trial. Thus, appellant failed to demonstrate that  
 28 counsel's performance was deficient. Furthermore, appellant failed to demonstrate  
 prejudice, as there is no support in the record for his speculative assertion that T. Purifoy  
 might not have consented to the search of her motel room. Counsel also testified that he did  
 not learn that appellant's girlfriend was a percipient witness until trial, at which point he  
 unsuccessfully attempted to endorse her as a witness. Because appellant did not inform  
 counsel before trial that his girlfriend was a witness and wished to testify, counsel was not  
 deficient for failing to interview her. As to his claim regarding the victim, appellant failed  
 to explain how a pretrial interview of the victim would have had a reasonable probability of  
 changing the outcome of the trial. Thus, the district court did not err in denying this claim.

29       Ex. 74, at 4-5 (ECF No. 28-1, at 5-6). Counsel did testify that he was unable to locate Purifoy. Ex.  
 30 57, at 30 (ECF No. 25-33, at 31). The court will discuss in greater detail below, regarding ground  
 31 8, the trial court's decision not to allow petitioner's girlfriend to testify. It is sufficient to note now

1 that petitioner did not inform counsel that his girlfriend would be a useful witness until the end of  
 2 the first day of trial. Finally, even now petitioner has not alleged any facts showing a reasonable  
 3 probability that the outcome of the trial would have been different had counsel investigated the  
 4 victim.

5 Second and third, petitioner claims that trial counsel failed to lodge objections at the  
 6 preliminary hearing and to subject the state's case to adversarial testing at the preliminary hearing.  
 7 On these issues, the Nevada Supreme Court held:

8 First, appellant claimed that trial counsel was ineffective during the preliminary hearing  
 9 because counsel failed to present a defense, failed to object to the State's version of events,  
 10 and admitted that there was sufficient evidence as to two of the charges. Appellant failed to  
 11 demonstrate that counsel's performance was deficient or that he was prejudiced. Counsel  
 12 made objections and tested the State's case by cross-examining the witnesses about the  
 13 charges. Appellant failed to identify other objections that counsel should have made or how  
 14 further objections or actions by counsel would have changed the outcome of the  
 proceedings. . . . While counsel did concede that there was probable cause as to the charges  
 of battery of an officer and assault of an officer, appellant failed to demonstrate that he was  
 prejudiced. The district court dismissed the battery-of-an-officer charge, and the testimony  
 of two police officers regarding appellant's resistance during arrest provided probable cause  
 to bind him over on the assault-of-an-officer charge. Therefore, the district court did not err  
 in denying this claim.

15 Ex. 74, at 2-3 (ECF No. 28-1, at 3-4) (citation omitted). The jury's verdict of guilt makes harmless  
 16 any constitutional error in the preliminary hearing. See United States v. Mechanik, 475 U.S. 66, 70  
 17 (1986). See also Williams v. Stewart, 441 F.3d 1030, 1042 (9th Cir. 2006). Therefore, petitioner  
 18 could not have suffered any prejudice.

19 Fourth, petitioner claims that counsel infringed on petitioner's statutory right to a speedy  
 20 trial by filing a pre-trial habeas corpus petition. On this issue, the Nevada Supreme Court held:

21 Second, appellant claimed that trial counsel was ineffective for filing a pretrial petition for a  
 22 writ of habeas corpus because it forced appellant to forfeit his right to a speedy trial.  
 23 Appellant failed to demonstrate that counsel's performance was deficient or that he was  
 24 prejudiced. Appellant initially asserted his right to a speedy trial, but after discussing the  
 25 issue with the district court, he agreed to waive his right to a speedy trial so that counsel  
 26 could challenge the charges in a pretrial petition for a writ of habeas corpus. In light of  
 appellant's voluntary waiver, appellant failed to demonstrate that counsel acted  
 unreasonably in filing a pretrial habeas petition. Furthermore, appellant did not demonstrate  
 a reasonable probability of a different outcome at trial had counsel not filed a pretrial habeas  
 petition. Accordingly, the district court did not err in denying this claim.

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1 Ex. 74, at 3 (ECF No. 28-1, at 4). Petitioner was not happy about it, but he did personally waive his  
 2 statutory 60-day speedy-trial right to let counsel file a pre-trial petition for a writ of habeas corpus.  
 3 Ex. 7, at 3 (ECF No. 24-10, at 4). The Nevada Supreme Court reasonably could have determined  
 4 that counsel did not provide ineffective assistance.

5 Ground 1(B) contains multiple claims of ineffective assistance of counsel. First, petitioner  
 6 claims that counsel failed to investigate the facts of the trial. This corresponds to a claim that the  
 7 court already has rejected in ground 1(A).

8 Second, petitioner claims that counsel failed to subject the case to adversarial testing. This  
 9 claim has been dismissed because it is unexhausted. ECF No. 46.

10 Third, petitioner claims that counsel failed to prepare for trial, interview, and endorse as a  
 11 witness Hasina Craddock, petitioner's girlfriend. This corresponds to a claim that the court already  
 12 has rejected in ground 1(A).

13 Fourth, petitioner claims that counsel failed to object to numerous leading questions that the  
 14 prosecutor asked of the victim. On this issue, the Nevada Supreme Court held:

15 Seventh, appellant claimed that trial counsel was ineffective for failing to object to the  
 16 State's numerous leading questions during the victim's testimony. Appellant failed to  
 17 demonstrate that objections by counsel would have had a reasonable probability of changing  
 18 the outcome of the trial, particularly given that the battery of the victim was captured on  
 video and the victim and the hotel manager, both of whom were familiar with appellant,  
 identified appellant as the attacker. Therefore, the district court did not err in denying this  
 claim.

19 Ex. 74, at 6 (ECF No. 28-1, at 7). Given the evidence produced at trial, the Nevada Supreme Court  
 20 reasonably could have concluded that petitioner had not shown prejudice.

21 Fifth, petitioner claims that counsel failed to prepare petitioner to testify. The trial court  
 22 advised petitioner about his right to testify. Ex. 14, at 168-70 (ECF No. 24-17, at 44-45). After the  
 23 trial court learned that petitioner had a previous felony conviction, the trial court advised petitioner  
 24 that he might be asked on cross-examination about that conviction. Ex. 16, at 5-6 (ECF No. 24-19,  
 25 at 3-4). Petitioner consulted with his attorney. He decided not to testify. Ex. 16, at 10-11 (ECF  
 26 No. 24-19, at 5). Petitioner does not allege how he would have testified if counsel had prepared  
 27 him for testimony. Petitioner also does not allege a reasonable probability of a different result at  
 28 trial had he testified, which is important given the evidence against him. The Nevada Supreme

1 Court reasonably could have concluded that petitioner had failed to demonstrate ineffective  
 2 assistance of counsel.

3 In ground 1(C), petitioner claims that counsel failed to object to admission of the videotape.  
 4 On this issue, the Nevada Supreme Court held:

5 Tenth, appellant claimed that trial counsel was ineffective for failing to object to the video  
 6 evidence for lack of authentication. Appellant failed to demonstrate prejudice, as he has  
 7 failed to support his claim with specific facts. . . . Neither the record nor appellant's factual  
 8 allegations indicate any issues with the authenticity of the video. Therefore, appellant failed  
 to demonstrate a reasonable probability that, had counsel objected to the authentication of  
 the video, the outcome of the trial would have been different. Accordingly, the district court  
 did not err in denying this claim.

9 Ex. 74, at 7 (ECF No. 28-1, at 8) (citation omitted). The hotel manager testified about the security  
 10 cameras and the recording equipment. He also testified that he watched a video recorded on that  
 11 equipment, showing petitioner attacking the victim. Ex. 14, at 112-23 (ECF No. 24-17, at 30-33).  
 12 Based upon that, the Nevada Supreme Court reasonably could have concluded that there were no  
 13 issues with the authenticity of the video and that petitioner had failed to demonstrate prejudice.

14 In ground 1(D), petitioner claims that counsel failed to object to admission of a booking  
 15 photograph of petitioner. On this issue, the Nevada Supreme Court held:

16 Ninth, appellant claimed that trial counsel was ineffective for failing to object to the display  
 17 of a prior booking photograph, which revealed to the jury that he had criminal history.  
 18 Appellant failed to demonstrate prejudice. At trial, an officer testified that, once he  
 19 discovered appellant's identification at the motel, he entered appellant's information in  
 "Crime Web" and obtained a photograph of appellant, which he then compared to the  
 attacker in the video. It appears that this testimony and photograph were improper  
 references to appellant's prior criminal activity, . . . and counsel should have objected.  
 Nevertheless, we conclude that the references were not prejudicial given the overwhelming  
 evidence of appellant's guilt. Therefore, the district court did not err in denying this claim.

21 Ex. 74, at 6-7 (ECF No. 28-1, at 7-8) (citation omitted). The Nevada Supreme Court was correct  
 22 that the evidence against petitioner was overwhelming. Its conclusion that petitioner suffered no  
 23 prejudice is a reasonable application of Strickland.

24 In ground 1(E), petitioner claims that counsel was ineffective at sentencing because counsel  
 25 conceded that petitioner had prior felony convictions. On this issue, the Nevada Supreme Court  
 26 held:

27 Twelfth, appellant claimed that trial counsel was ineffective for conceding that appellant had  
 28 prior felony convictions without sufficient proof submitted by the State. Specifically,  
 appellant asserted that counsel should have objected to the use of a conviction from

1 California to adjudicate him a habitual criminal because the State presented only court  
 2 minutes of that conviction and not a certified judgment of conviction. Appellant failed to  
 3 demonstrate that counsel's performance was deficient or that he was prejudiced. This court  
 4 previously rejected appellant's underlying argument on appeal from the denial of a motion  
 5 to correct an illegal sentence, and concluded that the State sufficiently proved appellant's  
 6 prior felony convictions at the time of sentencing. . . . Thus, appellant failed to demonstrate  
 7 that an objection by counsel had a reasonable probability of changing the outcome of the  
 8 sentencing hearing. Appellant also claimed that counsel failed to inform him that the State  
 9 had filed notice of intent to seek habitual criminal treatment, but appellant did not provide  
 10 any explanation as to how he was prejudiced. . . . Accordingly, the district court did not err  
 11 in denying these claims.

7 Ex. 74, at 8-9 (ECF No. 28-1, at 9-10) (citations omitted). The court discusses below in ground  
 8 2(B) the litigation on petitioner's prior conviction in California. It is sufficient to note that the  
 9 Nevada Supreme Court applied Strickland reasonably in determining that petitioner had not  
 10 demonstrated prejudice, based upon that litigation.

11 Ground 1(F) contains four claims of ineffective assistance of counsel. First, petitioner  
 12 claims that communication broke down between petitioner and counsel. This part of ground 1(F)  
 13 has been dismissed as unexhausted. ECF No. 46.

14 Second, petitioner claims that counsel violated petitioner's right to a speedy trial. This  
 15 claim is redundant to the claim in ground 1(A), discussed above.

16 Third, petitioner claims that counsel failed to file a motion to dismiss and a motion to  
 17 suppress an identification of petitioner. The record belies this claim. Counsel filed a pre-trial  
 18 habeas corpus petition seeking dismissal of charges for lack of evidence. Ex. 8 (ECF No. 24-11).  
 19 Counsel filed a motion to suppress an identification of petitioner. Ex. 11 (ECF No. 24-14).  
 20 Counsel did not give ineffective assistance, because counsel did what petitioner claims that counsel  
 21 should have done.

22 Fourth, petitioner claims that counsel should have filed a motion to sever. On this issue, the  
 23 Nevada Supreme Court held:

24 Sixth, appellant claimed that trial counsel was ineffective for failing to sever the charges of  
 25 attempted murder and battery with substantial bodily harm from the charge of assault on an  
 26 officer. Appellant failed to demonstrate that his trial counsel's performance was deficient or  
 27 that he was prejudiced. The offenses were properly joined because the assault, which  
 28 occurred while officers were arresting appellant for attempted murder and battery of the  
 victim, was relevant to prove appellant's identity in the attempted murder and battery  
 offenses, and evidence of the attempted murder and battery was relevant to explain  
 appellant's conduct during his arrest. Thus, evidence of the offenses was cross-admissible

1 to prove appellant's identity as the attacker and his consciousness of guilt when he  
 2 attempted to flee from the police. . . . Accordingly, any motion to sever the charges would  
 3 have been unsuccessful, and counsel cannot be ineffective for failing to file a futile motion. .  
 . Therefore, the district court did not err in denying this claim.

4 Ex. 74, at 5-6 (ECF No. 28-1, at 6-7) (citations omitted). Given that petitioner could not  
 5 demonstrate that a motion to sever the charges would have been granted, the Nevada Supreme  
 6 Court reasonably applied Strickland in its determination that the lack of a motion to sever was not  
 7 ineffective assistance of counsel.

8 Ground 1(G) is a claim of cumulative error of ineffective assistance of counsel. Having  
 9 found no error, the Nevada Supreme Court reasonably could have concluded that there was no  
 10 cumulative error.

11 Reasonable jurists would not find the court's conclusions on ground 1 to be debatable or  
 12 wrong, and the court will not issue a certificate of appealability for ground 1.

13 Ground 2(A) was dismissed because it was not exhausted. ECF No. 46.

14 In ground 2(B), petitioner claims that the prosecution failed to present a certified judgment  
 15 of conviction of a California case in support of the argument for habitual-criminal adjudication. On  
 16 this issue, the Nevada Supreme Court held:

17 Emerson contends that the district court erred by adjudicating him a habitual criminal  
 18 because the documents submitted by the State did not prove that his California conviction  
 19 was for a felony or that he was formally adjudicated. This contention lacks merit because  
 20 the documents submitted by the State demonstrate that Emerson was convicted of a felony  
 21 in California. And we note that neither Emerson nor his counsel challenged the California  
 22 conviction at sentencing, and defense counsel conceded that Emerson "qualified  
 23 numerically" for habitual criminal treatment. Accordingly, we conclude that the district  
 24 court did not err in this regard.

25 Ex. 41, at 8-8 (ECF No. 25-15, at 8-9). Respondents are correct that the statute provides that a  
 26 certified copy of a judgment of conviction is *prima facie* evidence of a prior conviction, but that is  
 27 not the only allowable evidence of a prior conviction. Nev. Rev. Stat. § 207.016(5). The law left  
 28 open the possibility that a state might not use a written judgment of conviction. The prosecution  
 provided documents from a California state court showing that petitioner was convicted of a felony.  
 Ex. 29 (ECF No. 24-32). The Nevada Supreme Court reasonably could have concluded that  
 petitioner qualified for habitual criminal treatment.

1 Reasonable jurists would not find the court's conclusions on ground 2 to be debatable or  
 2 wrong, and the court will not issue a certificate of appealability for ground 2.

3 The court dismissed ground 3 because it was redundant to ground 2(B). ECF No. 46.

4 On screening, the court dismissed ground 4 because it was a claim that the police had  
 5 violated the Fourth Amendment, and petitioner had a full and fair opportunity to litigate the claim in  
 6 state court. ECF No. 7. Reasonable jurists would not find this conclusion to be debatable or wrong,  
 7 and the court will not issue a certificate of appealability for ground 4.

8 The court dismissed grounds 5 and 6 because they were not exhausted. ECF No. 46.

9 Reasonable jurists would not find this conclusion to be debatable or wrong, and the court will not  
 10 issue a certificate of appealability for grounds 5 and 6.

11 The court dismissed ground 7 because it alleged error in state-court post-conviction  
 12 proceedings, which is not addressable in federal habeas corpus. ECF No. 7. Reasonable jurists  
 13 would not find this conclusion to be debatable or wrong, and the court will not issue a certificate of  
 14 appealability for ground 7.

15 Ground 8 is a claim that the trial court violated petitioner's rights to a fair trial and due  
 16 process, because the trial court refused to allow Hasina Craddock, a witness endorsed late, to  
 17 testify.<sup>1</sup> On this issue, the Nevada Supreme Court held:

18 Emerson contends that the district court erred by denying his request to call a late-endorsed  
 19 witness to testify on his behalf and thereby denying him his constitutional right to call  
 20 witnesses in his own defense. . . . We review "a district court's decision to allow an  
 unendorsed witness to testify for abuse of discretion." . . .

21 In order to protect a defendant's constitutional rights, a strong presumption exists in favor of  
 22 allowing late-disclosed witnesses to testify. . . . However, the right to present testimony is  
 23 not absolute and must be balanced against "countervailing public interests." . . .

24 Emerson concedes that the witness was not timely endorsed, . . . although Emerson almost  
 25 certainly knew that the witness, his girlfriend, was an eyewitness. . . . Further, Emerson did  
 26 not inform his counsel that the witness wanted to testify until listening to the testimony of  
 27 almost all of the State's witnesses. . . . And, the record does not indicate that the State  
 anticipated the witness; thus, her testimony would have resulted in unfair surprise to the  
 28 State. . . . Under these circumstances, we conclude that the district court did not abuse its  
 discretion by prohibiting Emerson's late-endorsed witness from testifying. . . . Moreover,

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<sup>1</sup>Petitioner also mentions the Equal Protection Clause of the Fourteenth Amendment, but the ground contains no claims that he was treated differently than other similarly situated people.

1 even if the district court erred by excluding the testimony, we conclude that any error was  
2 harmless. . . .

3 Ex. 41, at 2-4 (ECF No. 25-15, at 3-5) (citations omitted). The Nevada Supreme Court identified  
4 the governing federal law on the subject, Taylor v. Illinois, 484 U.S. 400 (1988). Although a  
5 defendant has a right to compulsory process, the trial court may preclude a witness from testifying  
6 as a sanction for violating a discovery rule. Id. at 410-16. The Nevada Supreme Court accurately  
7 summarized what happened at the end of the first day of trial and the start of the second day of trial.  
8 See Ex. 14, at 194-95 (ECF No. 24-17, at 51), Ex. 16, at 7-9 (ECF No. 24-19, at 4). This occurred  
9 not because defense counsel was deliberately not complying with the discovery rules, but because  
10 petitioner himself did not inform defense counsel about the witness until after the witness had  
11 watched the prosecution's witnesses testify. Petitioner was not candid with his own attorney. The  
12 Nevada Supreme Court reasonably concluded under Taylor that preclusion of Craddock's testimony  
13 was an acceptable sanction.

14 Reasonable jurists would not find this conclusion to be debatable or wrong, and the court  
15 will not issue a certificate of appealability for ground 8.

16 IT IS THEREFORE ORDERED that the petition for a writ of habeas corpus (ECF No. 8) is  
17 **DENIED**. The clerk of the court shall enter judgment accordingly and close this action.

18 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

19 Dated: March 31, 2017.

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ANDREW P. GORDON  
United States District Judge